

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER  
1947-2010

CHRISTOPHER T. ELLISON  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER  
ROBERT E. DONLAN  
ANDREW B. BROWN  
GREGGORY L. WHEATLAND  
CHRISTOPHER M. SANDERS  
LYNN M. HAUG  
PETER J. KIEL

ATTORNEYS AT LAW

2600 CAPITOL AVENUE, SUITE 400  
SACRAMENTO, CALIFORNIA 95816  
TELEPHONE: (916) 447-2166  
FACSIMILE: (916) 447-3512  
<http://www.eslawfirm.com>

BRIAN S. BIERING  
JEDEDIAH J. GIBSON  
CHASE B. KAPPEL  
SHANE E. C. MCCOIN  
SAMANTHA G. POTTINGER

OF COUNSEL:  
ELIZABETH P. EWENS  
CHERYL L. KING  
MARGARET G. LEAVITT  
RONALD LIEBERT

February 20, 2013

Commissioner Karen Douglas  
Commissioner David R. Hochschild  
Hearing Officer Ken Celli  
Hidden Hills Solar Electric Generating System (11-AFC-2)  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

California Energy Commission

**DOCKETED**  
**11-AFC-02**

TN # 69613

FEB. 21 2013

Re: 11-AFC-2: Applicant's Objection to the Old Spanish Trail Association's Motion for Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony or, in the Alternative, Motion to Strike Testimony.

Dear Commissioner Douglas, Commissioner Hochschild, and Hearing Officer Celli:

This letter is in response to the *Motion for Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony or, in the Alternative, Motion to Strike Testimony* filed by Intervenor Old Spanish Trail Association ("OSTA Motion") on February 18, 2013. The Applicant objects to the attempt by the OSTA to conduct discovery at this late stage in the proceeding as untimely and without good cause, and objects to the request for extension of time for rebuttal testimony. Due to the untimeliness of OSTA's attempts to reopen the discovery process, and because the Applicant has made a good faith effort to provide the OSTA with the means to obtain the requested information, the Applicant respectfully requests that the Committee deny the OSTA Motion in its entirety.

OSTA's characterization of the Applicant's application for confidential designation of cultural resources information as an attempt to "continuously hamper[ ] OSTA in its efforts to obtain access to the Cultural Resources data compiled by CH2MHill" is mistaken. The Applicant is required by law to request confidential treatment of the documents, and it is the law, not the Applicant, which prevents certain cultural resources information from being publicly released. In fact, the Applicant has specifically stated that it had no objection to the OSTA receiving copies of confidential filings made with the Commission from the Commission, so long as OSTA understood the obligation to keep such information confidential, did not share the filings with members of the public, and did not use confidential information in public filings made with the Commission.

Moreover, OSTA's statement that Applicant has "fail[ed] to provide the requested documents and information about its survey" is simply incorrect. OSTA has never before requested the

documents in its Motion from the Applicant. Despite being an active participant in this proceeding since November 3, 2011,<sup>1</sup> and a party since February 1, 2012,<sup>2</sup> the OSTA has never requested the documents sought in the OSTA Motion from the Applicant, either formally through the Commission's discovery process or informally through communications with the Applicant. Notably, the Applicant received only one request for GIS files from Mr. Pritchett, which was submitted informally through email, and to which Applicant promptly responded with the requested information. The OSTA's attempts to cure its lack of diligence at this late state of the proceeding should be dismissed, and the OSTA Motion denied in its entirety.

Notwithstanding the OSTA's lack of diligence in requesting this information related to the AFC earlier in the proceeding, the Applicant is actively working with the OSTA to assist it in obtaining the requested information. As described below most of the information requested is already publicly available. The remaining information is either available through other entities like the BLM and registries available to OSTA.

## **I. DOCUMENTS SOUGHT IN THE OSTA MOTION**

The OSTA Motion seeks two sets of documents relating to the Application for Certification of the Hidden Hills Solar Electric Generating System ("AFC") filed on August 5, 2011.

### **A. Cultural Resources Technical Report**

OSTA seeks "the complete Cultural Resources Technical Report" filed in August 2011, which is comprised of five appendices. Two of these appendices, Appendix 5.3A and Appendix 5.3D are available online at the Commission's website. Confidential designation of the remaining three appendices, 5.3B, 5.3C, and 5.3E, was granted by the Commission on November 29, 2011.

Appendix 5.3B is a Cultural Resources Technical Report prepared for the Bureau of Land Management ("BLM") and the Applicant relating to the HHSEGS project. It is Applicant's understanding that this report cannot be publicly released by the Applicant pursuant to the terms of the field use authorization granted by the BLM. However, the Applicant has provided Mr. Pritchett with the BLM report number, date, and BLM contact information so that he can obtain this report directly from the BLM.

Appendix 5.3C contains literature search results from the California Historical Resources Information System ("CHRIS"). It is Applicant's understanding that the search results cannot be publicly released by the Applicant due to the terms of the CHRIS access and use agreements, but that the requested information can be requested directly from the CHRIS by qualified individuals. The Applicant has informed Mr. Pritchett that the CHRIS search results are available directly from the CHRIS, and can be obtained in that manner.

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<sup>1</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-11-03\\_transcript\\_informational\\_hearing.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/documents/2011-11-03_transcript_informational_hearing.pdf)

<sup>2</sup> [http://www.energy.ca.gov/sitingcases/hiddenhills/notices/2012-02-01\\_Order\\_Granteeing\\_Jack\\_Pritchett\\_Petition\\_to\\_Intervene.pdf](http://www.energy.ca.gov/sitingcases/hiddenhills/notices/2012-02-01_Order_Granteeing_Jack_Pritchett_Petition_to_Intervene.pdf)

Finally, Appendix 5.3E contains figures of the archaeological surveys of the project site and literature search results. Some of these figures are available in Appendix 5.3B, which as explained above, may be available from the BLM.

**B. Documents Relating to the 2011 Pedestrian Survey of the HHSEGS Project Site**

OSTA seeks also “all documents pertaining to and/or describing the pedestrian survey of the entire HHSEGS project area that was conducted by CH2M Hill” in 2011. It should be noted that the 2011 pedestrian surveys were conducted in support of the AFC for the HHSEGS project. To the extent that such information was necessary to “evaluate the adequacy and reliability of the 2011 pedestrian survey”, such information should have been requested during the discovery period of this proceeding, rather than after all testimony in this proceeding has been filed.

As a practical matter, OSTA already has access to the information requested. That is, the information requested by the OSTA relating to the 2011 pedestrian surveys has already been previously provided. The citations to existing, publicly available information that are responsive to the OSTA’s informational needs have been provided directly to Mr. Pritchett.

- *The methodology employed in the survey, for example spacing of the transects walked by the surveyors.*

Please refer to pages 5.3-22 through 24 of the AFC, in addition to AFC Data Adequacy Supplement B.

- Section 5.3.3.6 Resources Inventory: “The HHSEGS site was subject to a 100 percent (Class III, or complete) archeological resources inventory by CH2M HILL. This inventory is based on both archive/background research and surface pedestrian reconnaissance survey. The results of the resource inventory are presented in the following sections. An architectural resources survey was not performed because the rural project area lacks architectural resources.”
- Section 5.3.3.6.2 Field Survey: “CH2M HILL completed a surface only, pedestrian survey of the HHSEGS site and a 200-foot buffer surrounding it from March 21 to April 1, 2011; May 23 to May 27, 2011; and June 28 to June 29, 2011. Fieldwork on BLM-managed land was conducted under Cultural Resources Use Permit No. N-837 61 and Fieldwork Authorization from the Southern Nevada Field Office executed on June 23, 2011. As per the latest CEC requirements (CEC, 2007), cultural resources surveys conducted were inclusive of the project site extending to no less than 200 feet around it. No historic architectural standing structures are present in the project area. Survey methodology for prehistoric and historic archaeological resources included using pedestrian transects spaced at 10 to 15 meter intervals

throughout the entire surveyed area. The topography of the project area is relatively flat. Transect spacing and observation strategies allowed for the detection of small sites (fewer than five artifacts or features). The California Office of Historic Preservation's (OHP) Information Center Procedural Manual(1995) defines a site as the location of a prehistoric or historic occupation or activity."

- *Weather conditions on the days of the survey. Days of high wind or other conditions can limit visibility and make careful observation difficult.*

Please refer to page 5.3-24 of the AFC, which states:

- "Visibility was excellent throughout the project area at approximately 90 percent or higher. Sparse creosote and desert scrub dot the project area. Observed deposition was alluvial sand to developing and established desert pavement, and the terrain was uniformly level. Subsurface exposures, including rodent burrows and any cut banks, were examined. Soil stratigraphy was opportunistically examined in these areas for evidence of stratified cultural deposits, but none were present. Soils observed consist entirely of gravel/sandy alluvium."
- *Instructions given to surveyors/participants specifically regarding the OSNHT and Mormon Road. For instance, were they advised of the existence, nature and/extend[sic] of the OSNHT/MR NC.*

The research design used to guide the records and archival search and subsequent fieldwork phase of the cultural resources inventory for HHSEGS, including the pedestrian surveys, is described in AFC Supplement B, specifically at pages 48 and 52. Specific research questions posed regarding the Old Spanish Trail/Mormon Road ("OST/MR") were as follows:

- Does evidence exist within the project area for older trails or tracks that may be segments of the OST/MR?
- Does evidence exist within the project area for camp sites associated with the OST/MR?
- If so, do artifacts associated with the transportation corridor reveal the age of the sites or the ethnic identity of the people who temporarily occupied them?
- How have major transportation corridors such as the OST/MR affected the historical use of the project area?

Specific survey expectations relating to the OST/MR that were set forth include the following:

- “Historic period sites that may be found include campsites and trash dumps in the vicinity of the railroads and historic roads known to be extant in the general area, including the Old Spanish Trail/Mormon Road, which runs approximately east-west less than a mile south of the project area. In addition, it is possible that segments of the OST/MR may cross the project area.”
- *The duration, nature, extent and intensity of the survey (how many hours, by how many people, and proof an intention to seek evidence of the OSHNT/MR NC).*


Please refer to Section 5.3.3.6.2 of the AFC, in addition to AFC Data Adequacy Supplement B.

## **II. CONCLUSION**

As explained above, OSTA’s untimely attempt to reopen the discovery process should not be permitted, and OSTA has failed to show good cause to explain its lack of diligence in seeking the requested information. Moreover, because the Applicant has made a good faith effort to provide the OSTA with the means to obtain the requested information and assuming OSTA does not withdraw its Motion, the Applicant respectfully requests that the Committee summarily deny the OSTA Motion in its entirety.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By   
\_\_\_\_\_  
Jeffery D. Harris  
Christopher T. Ellison  
Samantha G. Pottenger  
Attorneys for Applicants

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the HIDDEN	)	
HILLS SOLAR ELECTRIC GENERATING	)	Docket No. 11-AFC-2
SYSTEM PROJECT	)	
_____	)	

**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on February 20, 2013, I served the attached *Applicant's Objection to Old Spanish Trail Association's Motion for Subpoena for Subpoena Duces Tecum and Motion for Extension of Time for Rebuttal Testimony or, in the Alternative, Motion to Strike Testimony* via electronic mail to all parties and U.S. mail to all parties requesting hard copies on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Karen A. Mitchell

**SERVICE LIST**  
**11-AFC-2**

**APPLICANT**

Bradley Brownlow  
Michelle L. Farley  
Stephen Wiley  
BrightSource Energy  
1999 Harrison Street, Suite 2150  
Oakland, CA 94612-3500  
[bbrownlow@brightsourceenergy.com](mailto:bbrownlow@brightsourceenergy.com)  
[mfarley@brightsourceenergy.com](mailto:mfarley@brightsourceenergy.com)  
[swiley@brightsourceenergy.com](mailto:swiley@brightsourceenergy.com)

Clay Jensen  
Gary Kazio  
BrightSource Energy  
410 South Rampart Blvd., Suite 390  
Las Vegas, Nevada 89145  
[cjensen@brightsourceenergy.com](mailto:cjensen@brightsourceenergy.com)  
[gkazio@brightsourceenergy.com](mailto:gkazio@brightsourceenergy.com)

**APPLICANT'S CONSULTANTS**

Susan Strachan  
Strachan Consulting, LLC  
P.O. Box 1049  
Davis, CA 95617  
[susan@strachanconsult.com](mailto:susan@strachanconsult.com)

John Carrier  
CH2MHill  
2485 Natomas Park Drive, Suite 600  
Sacramento, CA 95833-2987  
[jcarrier@ch2m.com](mailto:jcarrier@ch2m.com)

**COUNSEL FOR APPLICANT**

Chris Ellison  
Jeff Harris  
Samantha Pottenger  
Ellison, Schneider and Harris, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816-5905  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)  
[jdh@eslawfirm.com](mailto:jdh@eslawfirm.com)  
[sgp@eslawfirm.com](mailto:sgp@eslawfirm.com)

**INTERVENORS**

Jon William Zellhoefer  
P.O. Box 34  
Tecopa, CA 92389  
[jon@zellhoefer.info](mailto:jon@zellhoefer.info)

Lisa T. Belenky, Sr. Attorney  
Center for Biological Diversity  
351 California Street, Ste. 600  
San Francisco, CA 94104

[lbelenky@biologicaldiversity.org](mailto:lbelenky@biologicaldiversity.org)

Ileene Anderson, Public Lands  
Desert Director  
Center for Biological Diversity  
PMB 447  
8033 Sunset Boulevard  
Los Angeles, CA 90046  
[ianderson@biologicaldiversity.org](mailto:ianderson@biologicaldiversity.org)

Jack Prichett  
Old Spanish Trail Association  
857 Nowita Place  
Venice, CA 90291  
[jackprichett@ca.rr.com](mailto:jackprichett@ca.rr.com)

Cindy R. MacDonald  
3605 Silver Sand Court  
N. Las Vegas, NV 89032  
[sacredintent@centurylink.net](mailto:sacredintent@centurylink.net)

Richard Arnold  
P.O. Box 3411  
Pahrump, NV 89041  
[rwarnold@hotmail.com](mailto:rwarnold@hotmail.com)

Amargosa Conservancy  
Donna Lamm, Executive Director  
Brian Brown  
Watershed Coordinator  
Route 127, P.O. Box 63  
[donnalamm@amargosaconservancy.org](mailto:donnalamm@amargosaconservancy.org)  
[dates@chinaranch.com](mailto:dates@chinaranch.com)

County of Inyo  
Randy H. Keller, County Counsel  
244 N. Edwards St., P.O. Box M  
Independence, CA 93526  
[dcrom@inyocounty.us](mailto:dcrom@inyocounty.us)

William D. Ross  
Law Offices of William D. Ross  
520 South Grand Avenue, Suite 300  
Los Angeles, CA 90071-2610  
[wross@lawross.com](mailto:wross@lawross.com)

***Hard Copy Required***

Southern Inyo Fire Protection District  
Larry Levy, Fire Chief  
410 Tecopa Hot Springs Road  
Tecopa, CA 92389  
[Levy2717@access4less.net](mailto:Levy2717@access4less.net)

***Hard Copy Required***

**INTERESTED AGENCIES**

Docket Unit  
[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Great Basin Unified APCD  
Duane Ono  
Deputy Air Pollution Control Officer  
157 Short Street  
Bishop, CA 93514  
[dono@gbuapcd.org](mailto:dono@gbuapcd.org)

Lorinda A. Wichman, Chairman  
Nye County Board of County Supervisors  
P.O. Box 153  
Tonopah, NV 89049  
[lawichman@gmail.com](mailto:lawichman@gmail.com)

L. Darrel Lacy  
Interim General Manager  
Nye County Water District  
2101 E. Calvada Blvd., Suite 100  
Pahrump, NV 89048  
[llacy@co.nye.nv.us](mailto:llacy@co.nye.nv.us)

Michael L. Elliott  
Cultural Resources Specialist  
National Park Service  
National Trails Intermountain Region  
P.O. Box 728  
Santa Fe, NM 87504-0728  
[Michael\\_Elliott@nps.gov](mailto:Michael_Elliott@nps.gov)

Southern Inyo  
Fire Protection District  
Larry Levy, Fire Chief  
P.O. Box 51  
Tecopa, CA 92389  
[sifpd@yahoo.com](mailto:sifpd@yahoo.com)

**ENERGY COMMISSION STAFF**

Mike Monasmith  
Senior Project Manager  
[mike.monasmith@energy.ca.gov](mailto:mike.monasmith@energy.ca.gov)

Richard Ratliff  
Staff Counsel IV  
[dick.ratliff@energy.ca.gov](mailto:dick.ratliff@energy.ca.gov)

Kerry Willis  
Staff Counsel  
[kerry.willis@energy.ca.gov](mailto:kerry.willis@energy.ca.gov)

**ENERGY COMMISSION – PUBLIC ADVISER**

Blake Roberts  
Public Adviser's Office  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)